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Health Care District

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In re

MENDOCINO COAST HEALTH CARE
DISTRICT, a political subdivision of the
State of California,

Debtor.

Case No. 12-12753

Chapter 9

MENDOCINO COAST HEALTH CARE
DISTRICT, a political subdivision of the
State of California,

Plaintiff,

vs.

UHC of California and the Office of
Statewide Health Planning and
Development of the State of California

Defendants.

Adv. Proc. No.

**COMPLAINT TO DETERMINE
VALIDITY AND EXTENT OF LIENS**

Mendocino Coast Health Care District ("Plaintiff") complains and alleges as
follows:

I.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this adversary
proceeding pursuant to 28 U.S.C. § 1334, in that it arises in the Plaintiff's Chapter 9 case.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

2. The statutory grounds for the relief requested herein is section 506(a)(1) of the Bankruptcy Code and Rule 7001(2) of the Federal Rules of Bankruptcy Procedure.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a) because the proceeding arises in a case under title 11 in this district.

II.

PARTIES

4. Plaintiff is the debtor in the above-captioned Chapter 9 case and is a political subdivision of the State of California.

5. Plaintiff is informed and believes that UHC of California (“Defendant UHC”) is a corporation organized and existing in accordance with the laws of the State of California.

6. Plaintiff is informed and believes that the Office of Statewide Health Planning and Development of the State of California (“Defendant OHSPD”) is a division of the Health and Human Services Agency of the State of California.

III.

FIRST CLAIM FOR RELIEF

(Validity and Extent of Lien Claimed by Defendant UHC - 11 U.S.C. §506(a)(1))

7. Plaintiff realleges and incorporates herein by reference each allegation in paragraphs 1 through 6.

8. On November 1, 2011, Plaintiff's Board of Directors passed and adopted Resolution No. 2011-5. A copy of Resolution No. 2011-5 is attached hereto as Exhibit A.

9. Resolution No. 2011-5 authorizes Plaintiff to issue bonds or otherwise borrow an amount not to exceed \$2,500,000 in accordance with an indenture.

10. Resolution No. 2011-5 approves a form of indenture.

11. Plaintiff subsequently issued a Report of Proposed Debt Issuance. A copy of the Report of Debt Issuance is attached hereto as Exhibit B.

1 12. The Report of Proposed Debt Issuance includes, at page 2, a section
2 entitled "SOURCE(S) OF REPAYMENT" followed by a series of options.

3 13. Among the options included under "SOURCE(S) OF REPAYMENT"
4 are "General fund of issuing jurisdiction (GNFD)" which box is marked with an "X" and
5 "Special tax revenues" which box is not checked.

6 14. Plaintiff did not issue bonds to Defendant UHC.

7 15. Plaintiff and Defendant UHC executed a Note Purchase Agreement on
8 December 8, 2011. A copy of the Note Purchase Agreement is attached hereto as Exhibit C.

9 16. The Note Purchase Agreement does not provide a grant of lien or
10 alternative form of security interest and does not reference special tax revenues as defined
11 under applicable state law or in section 902(d) of the Bankruptcy Code.

12 17. Plaintiff and The Bank of New York Mellon Trust Company, N.A., as
13 Trustee entered into an Indenture of Trust dated as of December 1, 2011. A copy of the
14 Indenture of Trust is attached hereto as Exhibit D.

15 18. Plaintiff is informed and believes that there are three separate notes that
16 constitute the aggregate total indebtedness of \$2,500,000. Copies of these notes (the
17 "Promissory Notes"), each marked "Specimen," are attached hereto as Exhibits E, F, and G.

18 19. The Promissory Notes do not provide a grant of lien or alternative form
19 of security interest and do not reference special tax revenues as defined under applicable state
20 law or in section 902(d) of the Bankruptcy Code.

21 20. The Indenture of Trust does not provide a grant of lien or alternative
22 form of security interest and does not reference special tax revenues as defined under
23 applicable state law or in section 902(d) of the Bankruptcy Code.

24 21. A Report of Final Sale was made in connection with the transaction. A
25 copy of the Report of Final Sale is attached hereto as Exhibit H.

26 22. The Report of Final Sale includes, at page 2, a section entitled "WAS
27 THE ISSUE INSURED OR GUARANTEED?" The section is followed by a series of
28 options. The only option marked, with an "X," is "No."

23. Plaintiff is informed and believes that Plaintiff did not grant a lien upon the assets of Plaintiff in favor of Defendant UHC to secure Plaintiff's performance of the obligations set forth in the Promissory Notes or for any other reason.

24. Plaintiff is informed and believes that Defendant UHC did not record evidence of the existence of a lien upon assets of the Plaintiff in the form of a UCC-1.

IV.

SECOND CLAIM FOR RELIEF

(Validity and Extent of Lien Claimed by Defendant OSHPD - 11 U.S.C. §506(a)(1))

25. Plaintiff realleges and incorporates herein by reference each allegation in paragraphs 1 through 24.

26. Plaintiff is informed and believes that Defendant OHSPD holds a valid and perfected lien on substantially all of the assets of Plaintiff, including but not limited to accounts receivable.

27. Plaintiff is informed and believes that the lien of Defendant OSHPD is senior to any other claims of lien.

28. On November 21, 2011, Mr. Carl A. McLaney, Deputy Director of Defendant OHSPD, sent a letter (the “OSHPD Letter”) to Mr. Raymond Hino, then Chief Executive Officer of Plaintiff. A copy of the OHSPD Letter is attached hereto as Exhibit I.

29. The OSHPD Letter evidences the consent of Defendant OSHPD to the Plaintiff's incurrence of the obligation to Defendant UHC under the Promissory Notes in accordance with Section IX of the Amended and Restated Regulatory Agreement effected as of July 8, 2010 by and between Plaintiff and Defendant OHSPD (the "Regulatory Agreement"). A copy of the Regulatory Agreement is attached as hereto as Exhibit J.

30. The OHSPD Letter does not consent to the creation of a junior lien in favor of Defendant UHC or any other person.

31. The OSHPD Letter does not create a lien in favor of Defendant UHC or any other person.

1 32. Defendant UHC does not have a "Permitted Encumbrance" as defined
2 in Section I.B.44 of the Regulatory Agreement.

3 33. Plaintiff is informed and believes that Defendant OHSPD did not permit
4 Defendant UHC to obtain a lien upon the assets of Plaintiff in favor of Defendant UHC to
5 secure Plaintiff's performance of the obligations set forth in the Promissory Notes or for any
6 other reason.

7 WHEREFORE, Plaintiff seeks judgment as follows:

8 1. That the Defendant UHC be found to have no valid claim of lien that
9 attaches to any of the assets of the Plaintiff;

10 2. That Defendant UHC's claim in the Chapter 9 case, to the extent that it
11 is an allowed claim, be found to be a general unsecured claim in the Chapter 9 case;

12 3. That Defendant OHSPD be found to have a valid lien in the assets of the
13 Plaintiff, senior to all other claims of lien; and

14 4. For such other and further relief as the Court may deem appropriate.

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16 Dated: February 19, 2013

FRIEDMAN & SPRINGWATER LLP

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18 By: /s/ Andrea T. Porter

19 Andrea T. Porter
20 Attorneys for Plaintiff Mendocino Coast
21 Health Care District
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